

Police Vol. 2.

S O M E
H I N T S

T O W A R D S

A Revival of the PENAL LAWS, the better
regulating the POLICE, and the Necessity of
enforcing the Execution of JUSTICE:

A N D T H E

Evil Consequences to SOCIETY from a false mistaken
Lenity, which has so much prevailed of late.

I N A

LETTER TO A MEMBER OF PARLIAMENT.

BY A MAGISTRATE.

In pessimâ Republicâ plurimæ leges.

TACITUS.

Vir bonus est quis?

Qui consulta Patrum, qui leges juraque servat.

HOR.

L O N D O N:

Printed for J. DEBRETT, opposite Burlington-
house, in Piccadilly.

MDCCLXXXVII.

[Price ONE SHILLING.]

THE MINT 3

TOWARDS

A Review of the Progress of the Mint
regarding the Police, and the Necessity of
enforcing the Protection of Justice



And
Last Observances to
be made, which has
been of late.

IN A

LETTER TO A MEMBER OF PARLIAMENT

BY A MAGISTRATE

In public Reproduction of the
the same as in the
the same as in the

L O N D O N

Printed for J. D. B. in the
the same as in the
the same as in the

ADVERTISEMENT.

THE Author of this little tract does not mean to throw any odium, or cast the least reflection on the respectable body of Magistrates (for the county of Middlesex) *in general*, to whom the public are so much indebted for their unwearied diligence and unremitting attention to the important duties of their office, and who deserve the greatest commendation and the thanks of all who prefer peace and good order to riot and confusion. The Author's seeming asperity on some parts of the Police, and the mal-administration so notorious in some of its conductors, is levelled at those only whom the cap fits.

Some apology may be thought necessary and due to those learned and truly respectable luminaries of the law, the twelve Judges, for whom the Author entertains the most profound veneration, as he is truly sensible they have never derogated from the honour and dignity of their elevated station, unless a too acute sensibility and feeling, in shewing mercy and pity to a set of objects, totally unworthy of either, may be deemed such.

HINTS

H I N T S
F O R
REGULATING THE POLICE,

In a Letter to a Member of Parliament.

DEAR SIR,

THE multiplicity of our laws, says Montefquieu, is a price we pay for our freedom; and a heavy tax it is, while they remain so voluminous and complicate, unless they were better administered: though the fault is not so much in the redundancy of the penal statutes, as in the indolence and inactivity of those whose business it is to put them in execution. And I am sorry to say, what, from the ignorance of some, and something

6 HINTS FOR REGULATING THE POLICE.

thing worse in others, they are very far from answering the end of the Legislature, and require a serious and solemn investigation, which I fear nothing less will ever effect than the wisdom and interference of Parliament; where from the abilities and steadiness of that august assembly alone we can look up for a reform.

When we seriously consider, that in a commercial nation like England, supported by trade, and an extensive and unbounded commerce to most parts of the known world, from which source its riches and acknowledged superiority are alone derived, offences will naturally increase in proportion as our trade increases, and we should be less surprised that our penal laws are so numerous; there must of necessity be a mode of punishment for every breach of the law, and the nature of every crime; and were but those modes of punishment more equally proportioned to the malignity of the offence, our grievances would in a great measure be redressed, with the help of an abridgement of some few of the penal statutes, which might be repealed without any injury to the law, or the constitution: though in fact our
laws

laws (in some particular instances), however numerous, are not sufficiently adapted to the genius of our constitution ; but that does not come within the bounds of my present intention.

Some will pretend, that *severity* in law, like *persecution* in religion, will never make proselytes, or answer the end of preventing criminals from pursuing their depredations on the public ; but I beg leave to differ from them in opinion, as I am firmly persuaded, that a false and mistaken lenity, which has too much prevailed of late, has produced a contrary effect to what was intended, and I am thoroughly convinced from fatal experience, that a false mercy has brought more men to the gallows, than it ever saved from it. It was an admirable saying of the great Judge Hale, When I find myself swayed to mercy, let me remember there is a mercy likewise due to my country. Plato says, A magistrate that punishes a criminal with death or ignominy, will never punish him so much for the past offence, for it is impossible for him to undo what is done already, but he will always regard what is to come, either to prevent the same offender from being guilty a second time,

8 HINTS FOR REGULATING THE POLICE.

time, or else to deter others from transgressing by his example. (Puffendorf, Book viii. ch. 3.) And were felons to suffer certain death, and led to execution within twelve hours after conviction and sentence passed on them, it would strike more terror on their minds than can be conceived. I have frequently given my present sentiments in the public papers on this subject, but as they seldom out-live the day, and are thrown aside unheeded, they have never produced the wished-for effects.

If some of those salutary remedies prescribed by our worthy Chairman of the quarter-sessions for the county of Middlesex, in his late address to the grand jury, such as suppressing some notorious places of public resort, night-cellars, and regulating public-houses in general, were strictly adhered to, it would go a great way towards putting a stop to that rendezvous of robbers of every denomination, which are now grown to such an alarming and audacious height, that no person can lie down in his bed, but he is in danger of losing his life or his property before morning, or perhaps both.

It

It is a received maxim in phyfic, that all disorders are eafier prevented than cured ; the fame will hold good in politics, and prove beyond a contradiction, that prevention is preferable to punishment. A magistrate whose ultimate wifh is to execute the complicated duties of his office, with the approbation of his own confcience, and of real ufe to the community, will, you may believe me, find it an arduous task to acquit himfelf to the fatisfaction of both. From ferious reflection I cannot but lament the daily increafe of felons of every description, and tho' fome people will pretend it is owing to the great number of foldiers and failors difcharged fince the laft war, together from the want of employment for a large body of artificers, joined to the dearness of all kind of provifions and the heavy taxes, the neceffity of the times have unavoidably loaded us with ; which I readily grant may probably have influenced many ; yet I am firmly perfuaded, that far the greater number of thofe who break through the laws of their country, at the hazard of their lives, are tempted to embark in fo perilous an un-

B

dertaking

dertaking from their *security* from *conviction*, and from a tenderness and mercy, however unmerited, shewed to a number of those guilty wretches after conviction, which seldom answers any other end, as daily examples convince us, than returning like a dog to his vomit, to their old iniquitous courses; and I am very much inclined to think the maxim of that artful and wicked politician Machiavel but too true, “ Examples of justice are more *merciful* than the unbounded exercise of pity.” Though God forbid that I should wish to shut out mercy from the royal breast, the sole prerogative of kings, and the brightest jewel in a monarch’s crown, but I could wish it made use of with more circumspection and less indiscriminately. I am thoroughly convinced from observation, that not one in five hundred have shewn an example of reformation in their lives or manners, or become ever after useful members of society. The more than ordinary dissoluteness and depravity of the times, among the inferior class of people particularly, makes a reformation necessary, which cannot be effected but by an *exemplary punishment*, rather than a *mistaken lenity*. The natural end of
all

all punishment is to dispose men to obey the laws of their country, and in consequence to restrain them from actions contrary to it.

Another evil which calls on those concerned for redress, is the loss of time, attending the sessions, together with the expence of carrying on a prosecution, with the difficulty of bringing a felon to *conviction*. Not many sessions ago, a prosecutor and three evidences were brought from the extremity of the county, and detained in London upwards of a week, at the expence of twenty pounds and more, for solicitors fees, &c.: and the prisoners on their trial acquitted of the felony, tho' no one in court believed them innocent; but the evidence in the construction of the law was deemed incomplete. To obviate these inconveniences, to call them no worse, I could wish in future, that the days on which a prisoner's trial was to come on were more regularly ascertained, to prevent a prosecutor and others concerned from so great a loss of time; and that the treasurer of the county be empowered to pay the expences of carrying on the prosecution (and that indulgence be no longer limited to paupers only), to prevent prosecutors

12 HINTS FOR REGULATING THE POLICE.

keeping out of the way, and never appearing, which is too often the case, whereby such a number of villains escape from the just punishment due to their atrocious crimes.

These observations, furnished from the author's daily experience as a magistrate, and founded on *truth*, do not proceed from any spirit of misanthropy, but, on the contrary, from an universal benevolence to all mankind, particularly to those misguided youths, who from bad example, or their own imprudence and misconduct, are led to supply their wants and extravagances by unlawful and fatal resources.

The shameful abuses (to call them by no harsher name) in the conduct of the Police in some parts of the metropolis, require a severe check from those who hold the reins of government, and at the same time, some of our penal laws, which abound with such a number of absurdities, will, I trust, undergo a severe scrutiny from the wisdom and attention of the Legislature; among a number of others is that of a reward being paid for the apprehension of high-way robbers, while the securing a murderer passes without recompence.

pence. Thus rating our properties at a higher value than our lives, the conviction of a paltry thief is rewarded by a premium of forty pounds, whilst the murderer may make his escape, unless apprehended through the love of justice.

It has been observed that the cause of frequent executions in England, which exceed in number those of all the rest of Europe put together (as I am well assured), is not the severity of our laws, or the more than ordinary depravity of the people, but the absurdity of the Police, which is not felt as a check upon the commission of a crime, but only as an engine to insure the punishment due to it, which is directly contrary to the intention of our laws, which are meant (as they ought to be) to prevent rather than punish crimes. The administration of the Police is still more wretched than the Police itself. It is entrusted to persons, many of whom have neither education or knowledge enough to qualify them for a proper discharge of the duties of their office; and the activity of their followers (if I am rightly informed) is to be set in motion more by the prospect of lucre and the temptation of rewards, than an honest

14 HINTS FOR REGULATING THE POLICE.

nest zeal for the security of the public, and the execution of the laws.

I am as much an enemy to every species of punishment, that carries with it the idea of *cruelty*, as any man, but the necessity for justice will not suffer me, as a *man*, a *magistrate*, or a *citizen*, to be silent, while the wrongs of ten thousand of his majesty's injured subjects call aloud for vengeance. I would not wound the mildness of our laws with a thought of any aggravation of punishment: I am an advocate only for a vigorous execution of justice agreeable to the laws now in force, nor have we need of better than some of ours, were they rightly and duly administered. The following lines, which Mr. Addison puts into the mouth of Cato, are not altogether inapplicable :

—————See they suffer death,
But in their deaths, remember they are men;
Strain not the laws, to make their torments grievous.

—————This base, degenerate age requires
Severity, and justice in its rigour;
This awes an impious, bold, offending world,
Commands obedience and gives force to law.

The

The depravity of manners, and the corruption of the present *times*, is the general complaint of all *times*; it ever has been so, and ever will be so, not considering that the wickedness of the world is always the same, as to the degrees of it, it only changes the nature of the vices. Discipline and fear may restrain and keep the vicious within bounds, but it is not to be thought they will ever be good of their own accord.

Our government is unexceptionable, and our constitution admirably constructed, and our laws framed with wisdom, equity, and justice, calculated for the security of every individual in the kingdom from the highest to the lowest; would I could say they were as well administered, but they are of no force, without a faithful and vigorous execution.

For forms of government let fools contest,
Whate'er is best administer'd is best. POPE.

The author of these lines was far from meaning that no one form of government is, in itself, better than another, but that no form of government, however excellent or preferable in itself,
can

16 HINTS FOR REGULATING THE POLICE.

can be sufficient to make a people happy, unless it be administered with integrity: on the contrary, the best sort of government, when the *form* of it is preserved, and the *administration* corrupt, is most dangerous.

Seneca, in one of his moral epistles, speaking of mercy, has these words: Now, though clemency in a prince be so necessary and so profitable a virtue, and cruelty so dangerous an excess, it is yet the office of a governor, as of the master of an hospital, to keep sick and mad men in order, and in case of extremity, the very member is to be cut off with the ulcer; all punishment is either for amendment or for example, or that others may live more secure. What is the end of destroying those poisonous and dangerous animals which are never to be reclaimed, but to prevent mischief?

It was a maxim in politics among the Romans, that to cause good justice to be administered, there must be good laws and good magistrates. But let the laws be ever so good, they lose all their force and effect without good and able magistrates for the execution of them; for
the

the magistrate is the soul of the law, who gives it vigour, action, and motion; and without which the law is but a dead letter.

The public good ought to be the end of all laws, and is the best comment upon, and interpretation of them; and we do not desire the preservation of our laws merely for the sake of the laws themselves, but for the common interest and advantage of mankind.

The Lacedemonians had a custom, contrary to the rest of the world, of punishing their criminals in the night, thinking perhaps that the darkness added something to the terror of the punishment.

One of the ill consequences of false lenity, even in antient times, is related by Solon, the Athenian lawgiver, who gives us a story of a man, that, having begged for a pardon of the king of France for the seventh murder he was guilty of, and finding he could not obtain it, boldly told the king that he would only own the first murder to be his own *proper action*, and that the *imputation* of all the rest must lie upon the king himself, for that he should never have committed

C

the

the other, if the king had not given him *encouragement* by pardoning the first. But I am wandering from my subject.

Among the many examples we have of the inequality of punishments in our penal statutes for crimes of a similar malignity, there are none more glaring and striking than that between those of *rape* and *bigamy* (as an ingenious observer remarks); which it is devoutly to be wished the proposed revision of the penal laws (if any such is seriously intended) may intirely rectify. The first of these is already capital, and is attended with the forfeiture of the criminal's life: the latter, indeed, is reckoned felony, but, since the time of Edward the VIth, has been admitted to clergy, and therefore the punishment is seldom more than burning in the hand, and perhaps twelve months imprisonment. The former, which is a direct violation of that chastity, which constitutes among nations, civilized and uncivilized, the honour of the female character, deserves the severest punishment which is permitted in a code of laws to be inflicted. In the latter, an unsuspecting and virtuous female is betrayed

betrayed by a specious demeanour, and fictitious pretensions, into a situation not less degrading than that of her who has suffered actual violence. The purity of her mind is equally injured. The offence is in truth a rape, committed by fraud instead of force, and is even attended with worse consequences. The subtle and deliberate villainy of the bigamist, whose schemes are calculated not merely to obtain possession of the person, but also of the property, frequently leaves the woman encumbered with issue, which maternal affection renders it impossible for her to desert. From a virtuous marriage, and a blameless conduct, she expected protection and peace, but she finds herself involved in ruin, and exposed to insult. She is injured in her honour, and deprived of her property, perhaps with the additional burthen of children to maintain, whom she has innocently brought into the world to be reproached by it for illegitimate birth. The crime is not often a subject of prosecution; the delicacy of the female mind revolts from the idea of exposing her situation in a court of justice. But no example can be made of delin-

quents without prosecution, and every honest woman, who has been thus injured, owes it not only to herself, but to the community, that such offences should not remain unpunished; and when it is considered with what deliberation this species of guilt must be contracted, with what artifices and fiction it must be conducted, and what tendencies it has to injure in the tenderest point the peace of individuals, the honour of families, and the public security, it surely ought to be classed, both with respect to criminality and punishment, amongst crimes of the first magnitude.

Every laudable endeavour, calculated to work a reformation among the lower order of men (by far the most useful part of the creation, and not unworthy our protection), should be duly attended to, as they might, under proper restrictions and regulations, become a worthy body of people, and useful members of the community, instead of being a pest to society, a disgrace to humanity, and a reproach to the Police of a nation, whose laws are in general wisely framed for the protection of every individual,
and

and calculated to redress every grievance a nation like this is subject to, and stands in need of little more than a spirit of exertion in the due execution. But there are, I fear, few magistrates in comparison of the whole who regard the public good so far as to devote so large a portion of their time as a due execution of those complicated duties of that important office naturally require; their other avocations and connexions will not always admit of it without a material injury to their domestic concerns.

There is nothing contributes so much to the well being of a state as a just and conscientious distribution of *rewards* and *punishments*; and were they properly administered, with a strict impartiality, it would strike at the root and almost extirpate in time every species of offenders against the laws of their country, except the few incorrigible, indeed, who are so hardened and hacknied in their vices as to be insensible to either. Rulers would then, in the strict sense of the words, be not a terror to good works, but to the evil, by punishing the guilty, relieving the oppressed, and protecting the innocent,

cent, always remembering that strict and solemn account which they themselves must one day give.

The framing our laws is vested solely in the legislative body of the people, for very wise purposes; the executive part belongs to the magistrate, nor has he any authority to alter them: whatever defects there may be, they will not be imputed to him, nor do they lie at his door. It is his duty truly and indifferently to administer justice to the punishment of wickedness and vice, and to the maintenance of true religion and virtue. This is the sole office of a just and upright magistrate, an office of which Lord Coke says (4 Inst. 170), the whole Christian world hath not the like, if it be duly executed. The trust reposed in the magistrate is of such a nature that he cannot make a substitute or deputy in his office, seeing that he may not put over the confidence that is put in him. Great cause, therefore, have the Justices to take heed that they abuse not this credit; either to the oppressing of the subject, by making an untrue record, or defrauding of the king, by suppressing the record that is true and lawful. LAMB. 63.66.

The

The dignity of that important office is great, and the duties of it are manifold and extensive, when we consider the vast number of offences over which magistrates have jurisdiction given them by many statutes, and likewise over all inferior crimes within their commission, whether such crimes be mentioned in any statute concerning them or not, for that all such crimes are either directly, or at least by consequence or judgment of law, against the peace.

I shall therefore conclude, with my ardent prayer and supplication to that great and exalted Being who sitteth on high, judging all the nations on earth with equity and true judgment, that it would please him to bless and keep the magistrates, giving *them* grace to execute justice, and to maintain truth.

I am, dear Sir, yours, &c.

W. H.

A SUP.

100

A

SUPPLEMENT,

Pointing out some few of the many defects in the penal statutes which make a revision so necessary; at the same time there are many statutes so obsolete, and out of use, and so totally inapplicable to the present times, that they ought to be expunged, particularly those enacted in the dark times of ignorance and superstition; which, if it answers no other end, will serve to make their number fewer, and the body of criminal laws less voluminous.

I DO not know scarce a greater hardship than the Inn-keepers are subject to, particularly in the county of Middlesex, by being obliged to receive a number of men and horses quartered on them. I have known nine horses quartered on one

D

poor

poor man, who, after paying for a wine-licence, beer-licence, and licence for spirituous liquors, together with the numerous other taxes in common with the rest of mankind, joined to the dearness of hay and straw, (which commodities, from a failure of crops for some seasons past, have risen to an extravagant price,) cannot get bread for his family; and why these people are deprived from living by their industry, and suffer greater hardships than fall to the lot of any other set of men, in a different line of life, is to me incomprehensible; nor do I know of any other remedy for this real evil, than by building barracks in different parts of the county, which would at once take off that enormous weight from their shoulders, which they are now sinking under. The magistrate who is often applied to, to regulate the number of horses, and to make an equal distribution, when the constable, whose business it is to quarter them, finds himself incompetent to the task, is a melancholy witness to the truth of what is here asserted. Nor is this all; several inn-keepers are under the necessity of shutting up their stables and forbearing to take in bait horses, to prevent their being liable to give quarters

quarters to those of the troop ; but what is deemed shutting up their stables, in the eye of the law, so as to justify them in a refusal, remains a doubt, and a doubt of a very serious nature in respect of its consequences, and the act is totally silent on that head.

In the present code of criminal laws, magistrates have a power over servants in husbandry *alone*, whereas, had servants of all denominations been included, domestic servants would have been equally under the cognizance of the magistrate, whereby their ill behaviour might have been redressed in a more summary way. The increase both of male and female servants, especially the former, amount to a number almost incredible in England, notwithstanding the late tax laid on them ; and for want of authority in the magistrate to keep them in due bounds, and punish every breach of their duty, the public suffers great inconveniences.

In respect of the crime of bigamy, the law is most shamefully defective ; it was originally made felony without benefit of clergy, which should never have been reversed ; but in the licentious

reign of Edward the VIth, they were allowed the benefit of clergy, which reduces the punishment to less than that inflicted on a poor wretch who picks your pockets of a handkerchief. As no crime scarce, except murder, is fraught with more pernicious consequences to society; so nothing less than *death* should most undoubtedly be annexed to it.

The numberless inconveniences arising from the difficulty of suppressing houses of ill fame, as indictments at common law are tedious, expensive, and often uncertain, they should no doubt be allowed to be determined in a summary way, by any bench of Justices, and punished by them with fine and imprisonment, or both, on conviction: this would prevent a needless expence and the tedious delays of the law, so justly complained of.

If the commissioners of the stamp-duties, when they grant licences for retailing wine, were obliged to follow the example of the magistrates who grant licences for selling beer and ale, by requiring a certificate, under the hands of the minister, church-wardens, and some of the principal inhabitants

bitants of the parish, that they were persons of sober life and conversation, it would prevent their granting them to houses of ill fame, and to persons of notorious bad characters, which is too frequently the case.

Though an act passed in the second year of William and Mary, for preventing persons from breeding, keeping, and feeding swine, within the cities of London, Westminster, and the borough of Southwark; yet I do not find any law in being, to restrain the lower order of people, in country villages, from suffering their swine to roam at large, breaking through hedges, destroying the young plants, to the great damage of the neighbouring gardeners, and a nuisance to the inhabitants in general, who are continually applying to the next magistrate for relief, but without success.

Among the many difficulties in prosecuting felons to conviction, there are few attended with more trouble, and uncertainty of success, than those commenced against the stealers of portmantiaus and trunks from behind post-chaises, coaches, or out of waggons on the road, which ought undoubtedly to be made capital, instead of
their

their being subject only, on the clearest evidence, to transportation, which is a great encouragement to that species of theft, where the conviction is so precarious and the punishment so inadequate.

The laws now in force (numerous as they are), relative to the *poor*, are materially defective in several instances ; particularly those concerning settlements, vagrants, apprenticing parish-children to improper masters and mistresses, and infants put out to nurse, and many others which country magistrates in particular are no strangers to, and which require a speedy and judicious revision ; and I could wish the remedy was as easily pointed out as the defects ; but, as I am informed a worthy patriot, endued with a true spirit of philanthropy, has it in contemplation to bring it forward, and to submit these defects to the wisdom of parliament, before the expiration of the present sessions, I shall say no more.

P O S T.

P O S T S C R I P T.

The number of the remaining penal statutes, which require a more than ordinary attention in the revision, together with some further reflections on the Police, I purpose shall be the subject of a future letter, provided these little hints, cursorily thrown out, should meet with that candour from an indulgent public, so peculiar to a nation distinguished for liberality of sentiment, towards those whose sole motive is the public good.

F I N I S.

COLLECTION OF TREATIES.

This day is published, in Three Volumes, price 18 s.
in Boards.

[To which is prefixed, "A Discourse on the Conduct of Great Britain, in respect of Neutral Nations," written by the Right Hon. Lord Hawkesbury; An occasional Narrative of the Public Events introductory to many of the Treaties; and the whole revised and collected with the utmost care and fidelity.]

A COLLECTION of all the TREATIES of PEACE, ALLIANCE, and COMMERCE, between Great Britain and other powers, from the Treaty of Munster, in 1648, by which the independency of the United Provinces of the Low Countries was acknowledged and confirmed, to the Treaties made at Paris, 1783, when the Independency of the United States of America was likewise acknowledged and confirmed; being the most interesting period in the History of Europe, containing in it all the Regulations of Trade, at present subsisting between Great Britain and other powers; and which, in case of any future alterations, must always be referred to, as forming the basis and ground-work of every subsequent Treaty.

Printed for J. Debrett, opposite Burlington-house, in Piccadilly.

Where may be had,

In Two Volumes Octavo, Price 10s. 6d. in Boards,

MEMOIRS of the BARON de TOTT, on the TURKS and the TARTARS. Translated from the French. By an English Gentleman at Paris, under the immediate Inspection of the BARON.

